

Award Matrix
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			agents, employees, or any other third parties based on any reason whatsoever arising out of or relating to any use of such signaling networks and call-related databases by or through CLEC. For purposes of this Section 30.4.3, mistakes shall not include matters arising exclusively out of the willful misconduct of CenturyTel or its employees or agents.
16.	<p>Charter Issue Statement: Should both Parties be allowed to modify, and upgrade, their networks; and should the other Party be responsible for assuming the costs of such network upgrades or modifications?</p> <p>CenturyTel Issue Statement: Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter's modifications to its network?</p>	47	<p>The Arbitrators agree with the argument presented by CenturyTel that it must continue maintenance, network modifications, and certain upgrades to meet certain industry standards while a CLEC does not. Further, CenturyTel also has the obligation consistent with 47 U.S.C. § 251(c)(2) to provide interconnection that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party and in a just, reasonable, and nondiscriminatory manner. To require CenturyTel to upgrade its network to accommodate any and all network upgrades made by CLECs that interconnect with CenturyTel is unreasonable. As stated above, the CLECs do not have the same network requirements as an ILEC nor are they required to meet certain industry requirements.</p> <p>CenturyTel has the duty under Section 251(a)(2) of the Act to avoid improper modifications to its network. Should Charter determine that the network modifications that CenturyTel has made to its network are improper, Charter has the option of dispute resolution by the Commission.</p> <p>The Arbitrators find that CenturyTel does not have the responsibility to upgrade its network to accommodate any network modifications that Charter may make to its network.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>47. TECHNOLOGY UPGRADES</p> <p>Notwithstanding any other provision of this Agreement, CenturyTel shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>

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17.	<p>Charter Issue Statement: Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?</p> <p>CenturyTel Issue Statement: Should the Agreement contain terms setting forth the process to be followed if Charter submits an "unauthorized" request to CenturyTel to port an End User's telephone number, and should Charter be required to compensate CenturyTel for switching the unauthorized port back to the authorized carrier?</p>	Art. III §50	<p>The Arbitrators determine that the cost recovery and penalties for unauthorized subscriber change of carrier requests provided under 47 C.F.R. § 64.1140 <i>et. seq.</i> are adequate to protect the Parties from damages they would experience as a result of porting because of slamming. The ICAs approved in Docket No. 28821 specifically reference these federal regulations to fix liability for unauthorized changes; these ICAs do not provide for any additional remedies. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Sections 20.1, p.32 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005) The Arbitrators are not persuaded that there is a special need in this case for the additional remedy sought by CenturyTel.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>50. Unauthorized Changes</p> <p>50.1 The Parties agree that each Party is required to comply with End User subscriber carrier change requests, as set forth in 47 C.F.R. § 64.1100, <i>et. seq.</i> ("Changes in Preferred Telecommunications Service Providers"), and any applicable rules or regulations promulgated by the Commission. As such, each Party will comply with such rules and regulations to ensure that End User subscribers are not changed without required authorizations.</p> <p>50.2 Any compensation that may be due either Party for the other Party's actions associated with unauthorized subscriber changes will be established by FCC regulations governing subscriber change procedures at 47 C.F.R. § 64.1100, <i>et. Seq.</i></p>
18.	<p>Charter Issue Statement: Should Charter have access to the customer side of the Network Interface Device ("NID") without having to compensate CenturyTel for such access?</p> <p>CenturyTel Issue Statement: CenturyTel believes that there are two issues presented in Issue 18:</p>	3.3, 3.4, 3.5, and 3.5.1	<p>In the Local Competition Order, the FCC deemed a NID to be an unbundled element. ¶392 states "[w]e require the incumbent LECs to offer unbundled access to the network interface device (NID), as a network element, as described below" and "... we conclude that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LECs NID". ¶393 and ¶394 go on to state that the new entrant bears the costs of connecting its NID to the incumbent LEC's NID and that the FCC does not require an incumbent LEC to permit a new entrant to connect its loops directly to the incumbent LECs NID. In ¶396, the FCC acknowledges the fact that competitors may benefit by directly connecting their loops to the incumbent LEC's NID, by avoiding the cost of deploying NIDs.</p>

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<p>(a) Should Article IX, Section 3.4 clarify that the End User controls Inside Wire except in those multi-tenant properties where CenturyTel owns and maintains such Inside Wire?</p> <p>(b) Is Charter required to submit an order to and pay CenturyTel for accessing CenturyTel's NID when Charter connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID?</p>	<p>The FCC reiterated the issue of the NID in the UNE Remand Order when addressing network elements that are to be unbundled; it states that ILECs must offer unbundled access to the NID. As an unbundled network element (UNE), the cost established for the NID would be at TELRIC pricing.</p> <p>The Arbitrators find that the NID is an unbundled element that should be offered by ILECs at TELRIC pricing. However, pursuant to the FTA § 251(f), rural telephone companies are given an exemption from providing interconnection, services, or network elements unless the Commission has terminated such exemption. CenturyTel is a rural carrier with such a rural exemption. This exemption has not been terminated by the Commission. Therefore, until and unless the Commission receives a request from a party to terminate CenturyTel's rural exemption, then CenturyTel is not required to provide access to UNEs at TELRIC pricing. Therefore, if Charter seeks access to any portion of the NID for any reason, it will have to pay CenturyTel the price that CenturyTel has proposed in the Parties' Agreement.</p> <p>Furthermore, the Arbitrators have determined that Charter will have to submit an order to CenturyTel when it connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID. This process follows the requirements for a CLEC to obtain a UNE from an ILEC.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply to any Charter use of the CenturyTel NID. Charter's use of the NID is defined as any circumstance where a Charter provided wire is connected to End User Customer's Inside Wiring in any manner and such connection is housed within housed within any portion of the NID.</p> <p>3.4 Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, maintenance and control of the End User Customer's Inside Wiring is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User's Inside Wire must be resolved by the End User.</p> <p>3.5 Charter may access the NID on CenturyTel's network side or the End User Customer's access side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. Charter may not access the NID</p>
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			<p>except in accordance with these terms. Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the End User Customer's access side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall Charter connect to use either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the End User Customer's Inside Wiring at the Charter provided interface device (i.e. terminal equipment) without also connecting within the End User Customer access side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID, unless any portion of such connection, including but not limited to the End User Customer's Inside Wire or the Charter provided loop, is housed within any portion of the NID. If any portion of such connection is housed within any portion of the NID, NID use charges shall apply. Removing the End User Customer's Inside Wire from the protector lugs and leaving the capped off customer wire within the NID is the only situation not considered use of the NID.</p>
19.	RESOLVED		RESOLVED
20.	RESOLVED		RESOLVED
21.	<p>Charter Issue Statement: Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter's network?</p> <p>CenturyTel Issue Statement: When Charter submits an LSR requesting a number port, should Charter be contractually required to pay the service order charge(s) applicable to such LSR?</p>	1.2.3	<p>The Arbitrators find that in Docket No. 31577, the Commission determined that each party is entitled to impose a "just and reasonable" charge to the other party for porting a customer to that party so long as that charge is based on the actual, forward-looking cost of performing the function and is nondiscriminatory. The Arbitrators in that docket went on to say that the "cost-causer" should bear the costs of LSRs. (See <i>Petition of Sprint Communications, L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Consolidated Communications of Fort Bend Company and Consolidated Communications Company of Texas</i>, Arbitration Award at 50, Dec. 19, 2006).</p> <p>The Arbitrators also note that the FCC has not prohibited service order charges from being assessed on LSR's submitted for porting requests. In the LNP Clarification Order, the FCC determined that the transaction charges being charged by BellSouth to various carriers were standard fees assessed for various services provided to carriers, which are unrelated to the provision of number portability and therefore are not</p>

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			<p>recoverable through an end-user (or other portability) charge. The FCC agreed with BellSouth that those fees for non-LNP related services do not satisfy the Commission's cost recovery standard for portability-related charges. (See <i>In the Matter of Tel. Number Portability, BellSouth Corp. Petition for Declaratory ruling and/or Waiver, Order</i>, CC Docket No. 95-116, FCC 04-91, 19 FCC Rcd 6800 (Rel. Apr 13, 2004) ("LNP Clarification Order").</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>1.2.3 The Party receiving the LSR will bill the service order charges set forth in the Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial Service Order Charge for each initial LSR submitted. A Subsequent Service Order Charge applies to any modification to an existing LSR.</p>
22.	Both Parties' Issue Statement: Does CenturyTel have the right to monitor and audit Charter's access to its OSS?	8.3.1, 8.3.2, 8.3.3	<p>As previously determined by the Commission in Texas 271 proceedings and incorporated into CLECs Agreements with other ILECs, the ILEC does have the right to monitor and audit a CLEC's access to its OSS.</p> <p>The Arbitrators find that CenturyTel's proposed contract language better reflects the Commission's policy. Therefore, the Arbitrators adopt CenturyTel's proposed contract language:</p> <p>8.3 Unless sooner terminated or suspended in accordance with the Agreement or this Article (including, but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC's access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) to audit **CLEC to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC's access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel shall have the right (but not the obligation) to monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC's access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not</p>

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			<p>the obligation) to electronically monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel shall have the right (but not the obligation) to use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.</p>
23.	<p>Charter Issue Statement: Should the Agreement preserve CenturyTel's rights to recover from Charter certain unspecified costs of providing access to "new, upgraded, or enhanced" OSS?</p> <p>CenturyTel Issue Statement: Should the Agreement preserve CenturyTel's rights to recover from Charter certain costs of providing access to "new, upgraded, or enhanced" OSS?</p>	15.2	<p>As previously noted in DPL Issue No. 22, the Commission found that an ILEC should be able to recover costs associated with upgrading or augmenting its OSS system. The Arbitrators find that the contract language proffered by CenturyTel would enlist a process for it to recover the costs to upgrade or augment its OSS systems and would also provide an opportunity for Charter to provide input as to whether the costs are reasonable.</p> <p>The Arbitrators note that it has the expectation that the Parties will work together to determine what rates and terms would be reasonable for any upgrades or augmentation to its OSS systems, prior to CenturyTel submitting such request for approval to the Commission.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>15.2 CenturyTel is entitled to recover its unrecovered costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems via the CenturyTel OSS Services, CenturyTel Pre-OSS Services, or CenturyTel OSS Facilities, or other means pursuant to rates or other charges ("OSS charges") determined by or otherwise approved by the Commission upon CenturyTel's submission in accordance with Applicable Law. Should CenturyTel incur the costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems during the Term of this Agreement, **CLEC will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.</p>
24.	RESOLVED		RESOLVED
25.	<p>Both Parties' Issue Statement: What obligations does CenturyTel have with respect to the inclusion of Charter's company information in CenturyTel directories?</p>	2.1.10	RESOLVED

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26.	Both Parties' Issue Statement: What procedures should be used for the distribution of secondary directories?	2.1.3.2	RESOLVED
27.	Both Parties' Issue Statement: How should each Party's liability be limited with respect to information included, or not included, in Directories?	7.1-7.3	<p>The Arbitrators addressed liability limitation issues in DPL Issue No. 15(c) by approving provisions that restrict damages to the amounts charged (or those that would be charged) for the pertinent products or services and prohibited consequential damages except for cases of willful or gross misconduct. This ruling was consistent with the ICAs approved in Docket 28821. The Arbitrators are not persuaded that deviating from this approach in the context of liability for directory listing is warranted. Accordingly the Arbitrators adopt the language proposed by CenturyTel restricting damages to the amounts paid by CenturyTel to the CLEC under the directory services article of the ICA; but also adopts the language proposed by Charter excluding cases of gross negligence as well as intention or willful misconduct from the limitations.</p> <p>In addition, the Arbitrators addressed indemnity provisions in DPL Issue No. 15(a) adopting general indemnity provisions that apply to both parties and preclude indemnity for a party's own misconduct. The Arbitrators determine that deviating from this approach in the context of directory listings is unwarranted.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language modified as follows to incorporate certain Charter proposed language:</p> <p>7.1 CenturyTel's liability to CLEC or any CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to amounts paid by CLEC to CenturyTel under this Article. Except with respect to <u>except to the extent that such errors or omissions, default, breach, or claims arise from CenturyTel's or its Publisher's gross negligence, or intentional or willful misconduct,</u> caused by the gross negligence or intentional misconduct of CenturyTel, CenturyTel shall have no liability to CLEC's or its End User Customers for any errors or omissions in any End User Customer or CLEC listing published by CenturyTel, or for the publication of any End User Customer data where such End User Customer does not desire a published listing. CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a CLEC End User</p>

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			<p>Customer listing for which CenturyTel is not liable under this section. **CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.</p> <p>7.2 **CLEC Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless CenturyTel, the other Party (the "Indemnified Party") and the other Party's subsidiaries, predecessors, successors, affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such person and entities its directors, officers, employees, agents and their affiliates (collectively, with Indemnified Party, the "Indemnitee Group"), the "Indemnified Parties") from any and all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys' fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above. Under this Article, except to the extent that such Claims arise from the Indemnified Party's negligence, gross negligence, or intentional or willful misconduct.</p> <p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, or relate to a CenturyTel indemnity claim. <u>an indemnity claim made against either Party that is covered by Section 7.2 above.</u></p>
28.	Both Parties' Issue Statement: How should the Agreement define each Party's directory assistance obligations under Section 251(b)(3)?	8	<p>The Arbitrators find that 47 C.F.R. 51.217 requires that "[a] LEC shall permit competing providers to have access to its directory assistance, including directory assistance services ... on a non-discriminatory basis..." 47 C.F.R. 51.217(a)(2) and 47 C.F.R. 51.217(a)(2)(i) state that nondiscriminatory access includes nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided. The contract language proposed by Charter would require that CenturyTel accept, include, and maintain all its customer listings in CenturyTel's database at no charge to Charter. Charter's language fails to account for the rates, terms, and conditions that apply to CenturyTel itself by the third-party administrator of the directory assistance database.</p> <p>The Arbitrators find that CenturyTel's language complies with the requirements of 47 C.F.R. 51.217(a)(2). If at any time Charter would decide that it would like CenturyTel to assume direct responsibility for the administration and maintenance of Charter's directory listing requirements, then Charter may request a proposal for rates, terms, and conditions for such service from CenturyTel.</p>

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			<p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>8.0 DIRECTORY ASSISTANCE OBLIGATIONS</p> <p>Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services from a third-party vendor(s) that uses or maintains a national DA database(s) ("national database"). Nevertheless, as each Party has the obligation to ensure that its End User Customers' DA listings are made available to the other Party's End User Customers, the Parties agree as follows:</p> <p>8.1 Each Party will promptly, upon request by the other Party, provide the requesting Party with the name of its third-party DA-provider;</p> <p>8.2 Each Party will be responsible for contracting with or otherwise making its own arrangements for services with any such third-party DA-provider, including but not limited to arrangements to provide its own End User Customers' DA listings to such third-party DA-provider for inclusion in a national database accessible to the other Party.</p> <p>8.3 Neither Party shall be required to directly provide its End User Customers' DA listings to the other Party, nor shall either Party be required to accept directly from the other Party such other Party's End User Customers' DA listings, for the purpose of submitting the Parties' commingled, End User Customers' DA listings to any third-party DA-provider that maintains and/or uses a national database accessible to the other Party.</p>
29.	<p>Both Parties' Issue Statement: Should the Pricing Article include Service Order rates and terms?</p> <p>(This issue is related to issue 21, above.)</p>	Art. II, § 2.70	<p>The issue in this DPL is whether the ILEC may charge a service order charge to recoup its administrative costs for processing an LSR. The Arbitrators find that, consistent with Commission policy in previous dockets (e.g. Docket No. 31577), it is appropriate for an ILEC to recover its administrative costs in the form of a service charge for LSRs and ASRs submitted by the CLECs.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>2.70 Initial Service Order</p> <p>An order submitted by **CLEC to CenturyTel initially ordering a port or other service required by this Agreement.</p>

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			<p>The Arbitrators find that the following language shall be placed in Article XI, Pricing.</p> <p>Article XI (Pricing), § III(B):</p> <p>Initial Service Order</p> <table style="margin-left: 100px;"> <tr> <td>Simple</td> <td style="text-align: right;">\$ 14.02</td> </tr> <tr> <td>Complex</td> <td style="text-align: right;">\$ 65.77</td> </tr> </table> <p>Subsequent Service Order \$ 7.53</p> <p>Manual Ordering Charge \$ 12.17</p> <p>"Initial Service Order" (ISO) applies to every Local Service Request (LSR).</p> <p>A "Simple" ISO charge applies to every LSR submitted that contains 1 – 9 numbers.</p> <p>A "Complex" ISO charge applies to every LSR submitted that contains in excess of 10 or more numbers.</p> <p>"Subsequent Service Order" applies to any modification to an existing LSR.</p> <p>"Manual Ordering Charge" applies in addition to the ISO charge for every LSR that is submitted manually where an electronic interface for such LSR is available.</p>	Simple	\$ 14.02	Complex	\$ 65.77
Simple	\$ 14.02						
Complex	\$ 65.77						
30.	Both Parties' Issue Statement: Should Charter be required to forecast projected service order activity?	Art. III, § 11.0	<p>The Arbitrators agree with Charter that CenturyTel's proposed contract language requiring projected forecast of service order activity would be tantamount to providing CenturyTel competitively sensitive information about the number of subscribers that Charter expects to "win" from CenturyTel. Therefore, the Arbitrators decline to adopt CenturyTel's proposed language.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>11. CAPACITY PLANNING AND FORECASTS</p> <p>Within twenty (20) Business Days from the Effective Date of this Agreement, or as soon</p>				

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			after the Effective Date as practicable, to the extent the Parties have not been interconnected pursuant to a prior interconnection agreement, the Parties agree to meet and develop joint planning and forecasting responsibilities which are applicable to interconnection arrangements. Such responsibilities for new interconnection arrangements, and for interconnection trunks or facilities ordered pursuant to a prior interconnection agreement, shall include but are not limited to the following:
31.	Both Parties' Issue Statement: How should specific Tariffs be incorporated into the Agreement? (This issue is related to Issue 3.)	<p>Art. II, Sections 2.79, 2.86, 2.89, 2.97, and 2.113</p> <p>Art. III, Sections 30.3.3.9 and 30.3.3.13</p> <p>Art. V, Sections 4.2.1.1, 4.2.1.3, and 4.2.2.3</p> <p>Art. XI, Sec. I(C)</p> <p>Art. XII, Sec. 2.1.2.2</p>	See DPL Issue No. 3

EXHIBIT H

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Petition of Charter Fiberlink-Missouri, LLC for)
Arbitration of Interconnection Rates, Terms, Conditions,) **Case No. TO-2009-0037**
And Related Arrangements with the CenturyTel of)
Missouri, LLC Pursuant to 47 U.S.C. § 252(b))

FINAL ARBITRATOR'S REPORT

Issue Date: January 6, 2009

Effective Date: January 6, 2009

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition of Charter Fiberlink-Missouri, LLC for)	
Arbitration of Interconnection Rates, Terms, Conditions,)	<u>Case No. TO-2005-0468</u>
And Related Arrangements with the CenturyTel of)	
Missouri, LLC Pursuant to 47 U.S.C. § 252(b))	

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ARBITRATOR: **Ronald D. Pridgin, Senior Regulatory Law Judge.**

Arbitration Advisory Staff:

Natelle Dietrich, Division Director, Utility Operations Division, Missouri Public Service Commission.

John Van Eschen, Utility Regulatory Manager, Utility Operations Division, Missouri Public Service Commission.

Myron Couch, Utility Operations Technical Specialist II, Missouri Public Service Commission.

ARBITRATION REPORT

PROCEDURAL HISTORY

Petition for Arbitration:

On July 31, 2008¹, Charter Fiberlink-Missouri, LLC (hereafter "Charter") filed a petition for arbitration with the Commission pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. The petition asks the Commission to arbitrate unresolved issues in the negotiation of an interconnection agreement between Charter and CenturyTel of Missouri, LLC (hereafter "CenturyTel").

Notice of Arbitration:

The arbitration was conducted according to Commission Rule 4 CSR 240-36.040, which governs arbitrations under Section 251 of the Act ("the Rule"). On August 8, the Arbitrator notified the parties of his appointment as Arbitrator, set August 15 as the date for CenturyTel to respond, and ordered parties to appear at an August 19 Initial Arbitration Meeting. On August 11, the Arbitrator appointed his advisory staff.

Initial Arbitration Meeting:

The Initial Arbitration Meeting was held on August 19 as scheduled. A principal topic of that meeting was the procedural schedule. Section (15) of the Rule authorizes the Arbitrator to vary the procedures and timelines set out in the Rule as necessary to complete the arbitration within the period specified in the Act:

¹ Unless otherwise noted, all calendar references are to 2008.

Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

Responses to the Petition for Arbitration:

CenturyTel responded on August 25. CenturyTel disputed Petitioners' positions on other issues, and raised additional issues for the Arbitrator to resolve.

Procedural Schedule:

On August 26, after considering the parties' proposals, the Arbitrator issued an Order Adopting Procedural Schedule. The schedule departed from the timelines in Rule 4 CSR 240-36.040 and modified various procedures.

Motions to Strike:

Petitioner and Respondent filed motions to strike on October 24, which are hereby denied.

Limited Evidentiary Hearing:

According to the procedural schedule, the parties filed prepared direct and rebuttal testimony. The parties also prepared and filed joint Decision Point Lists ("DPLs"). The Arbitrator held the hearing on October 27-28.

Arbitration Style:

Rule 4 CSR 240-36.040(5), "Style of Arbitration," provides:²

An arbitrator, acting pursuant to the commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) Final offer arbitration shall take the form of issue-by-issue final offer arbitration, unless all of the parties agree to the use of entire package final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

* * *

(E) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section.

Commission Rule 4 CSR 240-36.040(19), "Filing of Arbitrator's Draft Report," provides in pertinent part that, "[u]nless the result would be clearly unreasonable or contrary to the public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue." Choosing the position of one of the parties also means that the Arbitrator orders that party's proposed language to be incorporated into the interconnection agreement. Commission Rule 4 CSR 240-36.040(21), "Filing of the Final Arbitrator's Report," provides in pertinent part that, "The final report shall

² This style of arbitration is also popularly known as "baseball arbitration," in which an arbitrator picks either the player's or the club's final offer and decides what a Major League Baseball player's salary will be when the parties cannot agree to a contract.

include a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record."

Arbitration Standards:

In conducting issue-by-issue final offer arbitration, Section 252(c) of the Act provides:

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall --

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In turn, Section 251 of the Act, in pertinent part, provides:

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

With respect to the public interest in the regulation of telecommunications, the Missouri General Assembly has provided an express statement of public policy to guide the Commission:³

The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

(3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

³ Section 392.185, RSMo Supp. 2002.

Additional Proceedings:

Rule 4 CSR 240-36.040(24), "Commission's Decision," provides:

The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation. The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

STATEMENT OF FINDINGS AND CONCLUSIONS

Charter's petition identified thirty-nine open issues for resolution. CenturyTel disagreed with the phrasing of virtually every issue Charter listed, and suggested different verbiage for those issues, as well as breaking up some issues into subparts. Thus, the Arbitrator will resolve the following issues, with each issue articulated as the winning party for that issue has phrased it.⁴ When making findings of fact based upon witness testimony, the Arbitrator will assign the appropriate weight to the testimony of each witness based upon his or her qualifications, expertise and credibility with regard to the attested to subject matter.

Attached in compliance with Commission Rule 4 CSR 240-36.040(21) is the Arbitrator's Statement of Findings and Conclusions, consisting of several topical sections in which each Decision Point identified by the parties is considered in the light of the parties' arguments and the evidence they adduced. The Arbitrator has rendered a decision on each such Decision Point or group of related Decision Points and stated the basis

⁴ In the Parties' proposed orders filed in lieu of briefs, they stated that they had resolved Issues 1, 6, 9, 25, 26, 30, 33, 34 and 39. As such, those issues will not be addressed in this order.

therefore. The Arbitrator certifies that each such decision meets the requirements of §§ 251 and 252 of the Act.

Respectfully submitted,

/s/ Ronald D. Pridgin

Ronald D. Pridgin,
Senior Regulatory Law Judge,
Arbitrator.

Dated this 6th day of January, 2009, in Jefferson City, Missouri.

Article II - Definitions

2. How should the Agreement define the term Network Interface Device or NID?

24. Should Charter have access to the customer side of the Network Interface Device ("NID") without having to compensate CenturyTel for such access?

Because Issues 2 and 24 are related they will be considered together. Also decided are CenturyTel's additional sub-issues.

Findings of Fact

1. A Network Interface Device ("NID") is a piece of passive equipment.⁵
2. CenturyTel's proposed service order charge rate is \$33.38 and its proposed monthly recurring NID charge is \$1.91.⁶
3. CenturyTel's service order charge is based on a cost study conducted by CenturyTel but not sponsored by any witness to this proceeding.⁷

Conclusions of Law and Discussion

CenturyTel Objection

The essence of CenturyTel's objection to Mr. Gates' rebuttal testimony questioning CenturyTel's proposed NID rate level is that "Charter already agreed to CenturyTel's NID charges in negotiations and did not place the amount of such charges in dispute in its

⁵ Ex. 7, p. 5. l. 7-12.

⁶ Tr. 428, l. 22; 471, l. 4-8.

⁷ Ex. 15, 17.

arbitration petition.”⁸ CenturyTel’s statement is wrong as a matter of fact and conclusion of law.

CenturyTel’s challenge to Mr. Gates’ rebuttal testimony regarding the unreasonableness of CenturyTel’s NID rate rests on a factual non sequitur: Since Charter opposed the imposition of any NID charge, Charter has accepted a particular NID rate level. CenturyTel’s argument amounts to what one federal court called an unconvincing “subtle abstraction,” as further discussed below. That is, if a party to interconnection negotiations raises a rate application issue, the party is not also raising a rate level issue. It is self-evident from the facts in this matter that, in opposing any NID rate level, Charter opposes a particular rate level, such as the \$1.91 proposed by CenturyTel.

A cardinal rule of contract interpretation is to ascertain the parties’ intent.⁹ The DPL confirms that Charter and CenturyTel failed to agree on the entire concept of NID compensation. There simply was no meeting of the minds on any NID compensation issue. Given this divide, Charter’s silence on a particular NID rate cannot be construed as any form of acceptance of that particular proposed NID rate.¹⁰

Charter’s proposed language makes clear that it believes, under federal law, it is never obligated to compensate CenturyTel for the type of access Charter seeks. By contrast, CenturyTel’s language makes clear that it expects to receive both an initial service order charge and recurring monthly revenue from Charter for “use” of the NID.¹¹ In this circumstance, the Parties obviously have failed to agree as to compensation, and thus

⁸ CenturyTel Motion to Strike at 2.

⁹ *CenturyTel of Missouri, LLC v. Socket Telecom, LLC*, 2008 WL 4286648 (Mo. P.S.C. 2008) (citing *Vincent v. Schneider*, 194 S.W.3d 853, 859 (Mo. Banc 2006)).

¹⁰ See, generally, *Pride v. Lewis*, 179 S.W. 375 (Mo. App. W.D. 2005).

¹¹ DPL at 89-90, CenturyTel proposed Section 3.5.1.

Charter has not agreed to either the service order charge,¹² or the NID charge, or the NID rate, whatever its level. Thus, under the Telecommunications Act, it is the Commission's role to determine what rate level, if any, is appropriate for NID access.

Federal jurisprudence favors Charter's interpretation here. In *TCG v. PSC of Wisconsin*¹³ the United State District Court for the Western District of Wisconsin rejected a similar argument to the one CenturyTel advances in its Motion to Strike. There, on appeal from a Wisconsin PSC arbitration award petitioner TCG argued that because respondent Ameritech failed to dispute the character of TCG's switch (end office versus tandem), and because TCG characterized its switch as a tandem, the Wisconsin PSC could not have established anything other than a tandem switching rate level for TCG. That is, TCG argued that Ameritech had raised only the rate application issue, not the rate level issue. The federal court upheld the Wisconsin PSC's determination that it could address both the rate application and rate level. The court concluded that TCG's argument depended on a "subtle abstraction" not supported by the Telecommunications Act:

Although state commissions are limited to deciding issues set forth by the parties, competing provisions require them to resolve fundamental elements necessary to make an interconnection agreement a working document. For example, under the act's arbitration and pricing standards, state commissions "shall" establish rates for interconnection. 47 U.S.C. § 252(c). Thus, state commissions are accorded considerable latitude to resolve issues within the compass of the pricing and arbitration standards, even if these matters are not specifically identified by parties as open issues in their petitions for arbitration. An issue as broad and important to an interconnection agreement as what parties will charge one another necessarily will include sub-issues that must be addressed by the arbitration panel in order to decide the larger matter. This is a common sense notion. That state commissions possess wider discretion under the act to determine rates for interconnection-related

¹² Charter separately opposes imposition of the service order charge when the company accesses a CenturyTel NID, for the simple reason that there is no service order activity to justify such a charge. Charter's opposition is memorialized in its Proposed Order filed on November 20, 2008 at Issues 27 and 40.

¹³ 980 F.Supp. 992 (1997).